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Proposed Attorneys for Debtor

Proposed Local Counsel for Debtor

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

\* \* \* \* \*

IN RE:

Case No. 17-51019-btb

(Chapter 11)

SIERRA CHEMICAL CO., a Nevada

domestic corporation,

Debtor.

**EMERGENCY MOTION FOR ORDER  
AUTHORIZING DEBTOR TO INCUR  
UNSECURED DEBT FROM CARUS  
CORPORATION (11 U.S.C. § 364(b)) AND  
ALLOWING SAME AS AN  
ADMINISTRATIVE EXPENSE**

Hearing Date: OST Pending

Hearing Time: OST Pending

Est. Time: 15 minutes

Set by: Judge Beesley

COMES NOW, Debtor and Debtor-In-Possession, SIERRA CHEMICAL CO., by and  
through its attorneys, BARBARA L. YONG, ESQ., of GOLAN CHRISTIE TAGLIA LLP and  
STEPHEN R. HARRIS, ESQ., of HARRIS LAW PRACTICE, and hereby files its MOTION

1 FOR ORDER AUTHORIZING DEBTOR TO INCUR UNSECURED DEBT FROM CARUS  
2 CORPORATION (11 U.S.C. § 364(b)) AND ALLOWING SAME AS AN  
3 ADMINISTRATIVE EXPENSE (11 U.S.C. § 503(b)) (“Motion”), requesting this Court enter  
4 its Order authorizing the Debtor to obtain post-petition financing on an unsecured basis from  
5 CARUS CORPORATION (“Carus” or “DIP Lender”) and provide the DIP Lender with an  
6 administrative priority expense claim with respect to said financing, pursuant to 11 U.S.C.  
7 §364(b) and 503(b)(1) and Rule 4001(c) under the Federal Rules of Bankruptcy Procedure, and  
8 hereby states and alleges as follows.

### 9 BACKGROUND

10  
11  
12 1. Debtor is in the business of manufacturing and distributing environmental  
13 chemicals for municipal, industrial and mining markets, supplying water treatment plants,  
14 agricultural facilities and food processors with essential chemicals from its production bases in  
15 Sparks, Nevada, and Stockton, California.

16 2. Since 2011, Debtor has maintained “zero-balance” accounts (“ZBA”) for its  
17 daily operations, wherein all proceeds of daily deposits, less checks written for expenses, are  
18 “swept” from the account and applied to pay down an existing revolving line of credit loan at  
19 Bank of America. (Carus is a co-borrower on the line of credit, and likewise uses all excess  
20 cash in its account to pay down the line of credit.) To the extent that daily expenses exceed the  
21 available cash in the account, Debtor has drawn needed amounts against the line of credit.

22 3. Bank of America has declined to extend Debtor continuing access to the Bank of  
23 America line of credit. Therefore, to fund Debtor’s operations post-petition, Carus will extend  
24 a new revolving line of credit to the Debtor in an amount not to exceed \$1,200,000.00. Debtor  
25 will take advances on the line only as needed to pay daily expenses. The term of the loan is six  
26 months, and advances will bear interest at 4%. The Declaration of Susan Buchanan, Debtor’s  
27 CFO, is attached hereto as Exhibit A.

28 4. Debtor recognizes that its post-petition revenue is Bank of America’s cash

1 collateral, and subject to the Cash Collateral Order entered by this Court. Bank of America has  
 2 consented to the Debtor's use of its cash collateral, to its borrowing from Carus to fund post-  
 3 petition operations, and to Carus having the administrative priority requested herein.

#### 4 **JURISDICTION**

5 5. This Court has jurisdiction over this Chapter 11 proceeding pursuant to 28  
 6 U.S.C. § 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(3).  
 7 Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 1409.

#### 8 **RELIEF REQUESTED**

9 6. By this Motion, Debtor seeks authorization under Section 364(b) of the  
 10 Bankruptcy Code for the Debtor to incur unsecured debt to fund its continued operations. To  
 11 the extent that the proposed line of credit is outside the ordinary course, Debtor seeks an order  
 12 that Carus be granted an administrative priority for amounts advanced on the revolving line of  
 13 credit under 11 U.S.C. § 503(b)(1). Pursuant to the terms of the proposed financing, Debtor will  
 14 receive a line of credit from CARUS in the amount of \$1,200,000.00, to allow Debtor to fund its  
 15 estate, continue its day to day operations, including paying vendors which are now demanding  
 16 COD terms for new orders, and to pay Debtor's counsel and other retained professionals for  
 17 services rendered on behalf of Debtor's estate and its creditors. Said line of credit would also  
 18 be used to allow Debtor to remain current in its debt service to its secured lender, Bank of  
 19 America.  
 20

21 7. The proposed DIP loan from Debtor's owner and co-borrower under the Bank of  
 22 America line of credit, under Section 503(b)(1) of the Bankruptcy Code, would be a  
 23 continuation of the prior and procedure, except that instead of drawing on a line of credit from  
 24 Bank of America, the Debtor will draw on a line of credit from Carus, with a cap placed at  
 25 \$1,200,000.00, and provide Carus with administrative expense status under Bankruptcy Code  
 26  
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 28

§503(b)(1) for such distributions to the Debtor's estate.

### **BASIS FOR RELIEF REQUESTED**

8. 11 U.S.C. § 364(b) allows the Court, after notice and hearing, to authorize the Debtor-In-Possession to incur unsecured debt that is not in the ordinary course of the Debtor's business, allowable under 11 U.S.C. § 503(b)(1) as an administrative expense. Sierra believes that it is in the best interests of the estate and creditors to borrow funds from the DIP Lender on an as needed basis, in order to continue its ability to operate and pay its allowed administrative expenses, as well as Debtor's day-to-day operational costs and debt service necessary to preserve the assets of the Debtor's estate.

9. In order to meet its monthly operating expenses and monthly debt service, Debtor requires an estimated \$1,984,000.00 per month. **See Exhibit A.** Debtor's income is estimated and averages \$2,000,000.00 per month. However, Debtor anticipates at times having insufficient income in the short term to meet monthly operating expenses, debt service and to pay professionals, so will draw on the Carus line of credit to meet these needs until Debtor's assets can be sold and proceeds and other funds received. Debtor anticipates that sale proceeds will be more than adequate to pay all secured creditors and make a substantial distribution to unsecured creditors, but preparing for said sale will take time, necessitating the need for the DIP Loan.

10. 11 U.S.C. § 364(b) provides in pertinent part as follows:

(b) the court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

11. An Order granting authority to borrow on an administrative expense priority basis must be supported by a finding that the loan is an actual, necessary cost to preserving the

1 estate under 11 U.S.C. § 503(b)(1)(A). In Re Club Development and Management Corp., 27  
2 B.R. 610, 611 (9<sup>th</sup> Cir. BAP 1982). An allowance pursuant to Section 503(b)(1) of the  
3 Bankruptcy Code is two-fold: it is not only an allowance against the estate, but also an  
4 administrative expense claim that enjoys a priority over other unsecured claims. Standard Oil  
5 Company v. Kurtz, 330 F.2d 178, 180 (8<sup>th</sup> Cir. 1964); The Matter of Witt Dairy Co., 48 F. Supp.  
6 964 (N.Dist.CA 1942).

7  
8 12. In the instant case, the credit line is necessary to help protect and preserve  
9 Debtor's estate. As set forth herein, Debtor would have more difficulty in the short-term  
10 meeting and paying monthly operating expenses, monthly debt service, administrative costs and  
11 expenses of preserving the estate without the credit line from Carus. This is particularly true at  
12 the outset of this case, when certain vendors are requiring payment of cash in advance in order  
13 to deliver product (chemicals) necessary to Debtor's daily operations. The DIP Loan is  
14 necessary to pay these vendors, so the Debtor can fill its customers' orders.

15  
16 13. Without the credit line as provided for herein, it would be impossible for the  
17 Debtor to preserve the assets of the estate and pay for administrative costs. Bank of America  
18 has declined to advance Debtor additional sums under the existing line of credit, so Debtor  
19 would be forced to seek other alternative forms of financing, which would be more time  
20 consuming to procure and more costly to the estate, and which would ultimately work to the  
21 detriment of all the creditors of the estate.

22  
23 14. Debtor believes that it is in the best interest of its estate and creditors to borrow  
24 funds from Carus in order to pay its monthly operating expenses, allowed administrative  
25 expenses, and debt service, as necessary.  
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**NOTICE**

15. Given the emergency nature of the relief requested herein, and the potential disruption to the Debtor's business that will ensue if such relief requested is not granted, the Debtor submits that no further notice need be given prior to the granting of the relief sought herein. The United States Trustee's Office has indicated its consent to having this Motion heard on shortened notice.

WHEREFORE, Debtor, SIERRA CHEMICAL CO., requests an Order from this Court authorizing it to borrow funds from CARUS CORPORATION. in amounts to be determined by the needs of the Debtor and on terms and conditions as set forth above, which amount shall not exceed the sum of \$1,200,000.00, and as an allowable administrative expense under 11 U.S.C. § 503(b)(1); and for such other and further relief as is just and proper.

*/s/ Barbara L. Yong*

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Proposed Attorneys for Debtor

# EXHIBIT “A”

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Revenue	2,000,000
1. Freight	320,000
2. Cost of Materials	1,025,000
3 Leases (Sparks, Stockton, Forklifts, Compressors)	65,000
4 Salary & Wages (Salaried and Hourly)	250,000
5. Payroll Taxes	21,000
6. Benefits (employees, medical, etc.)	50,000
7. Miscellaneous	25,000
8. Utilities (telephone, electric, water)	30,000
9. Insurance	35,000
10. Outside services (temporary help, enviornmental, etc)	50,000
11. Repairs and Maintenace	65,000
12. Real estate taxes	23,000
13 Travel	10,000
14. Professional Fees	15,000
Expenses	1,984,000
Net Income	16,000